

REMARKS

Claims 2, 3, 5-10, 13-23, 25, 26, 28-33 and 36-50 have been withdrawn in response to the election of claims 1, 4, 11, 12, 24, 27, 34 and 35 for further prosecution on the merits. In the March 13, 2008 Office Action imposing the restriction, independent claims 1 and 24 were deemed generic. Accordingly, should claims 1 and 24 be deemed allowable, consideration of the withdrawn claims is requested. 37 C.F.R. §1.141.

Herein, claims 1, 4, 11, 12, 24, 27, 34 and 35 have been amended to improve their form and/or to better claim the invention.

The drawings stand objected to for various informalities that suggest that the Examiner reviewed originally filed drawing figures 1-17. However, formal drawings were submitted on August 3, 2004, which formal drawings were included in the publication of the application, namely, U.S. 2004/0267658. Since formal drawings have been previously submitted, it is believed that the objection to the drawings is in error. Nevertheless, should the previously submitted formal drawings require correction, the Examiner is respectfully requested to specifically indicate which drawings require correction.

Claims 1, 4, 11, 12, 24, 27, 34 and 35 stand rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. Reconsideration is requested.

Herein, independent claims 1 and 24 generally recite steps of conducting a live combinatorial exchange. The steps include receiving from each of a plurality of bidders at least one bid comprised of a plurality of items, an initial quantity of each item and a price for all of the items and their quantities. An allocation is determined for the type of exchange being conducted. The allocation includes a plurality of bids, with each bid of said allocation including all of the items of the bid and at least part of the initial quantity of each item. At least a portion of each bid of the allocation is caused to be displayed to each bidder of a first subset of the bidders that has at least one bid that is not included in the allocation. From each bidder of the subset of the first subset of bidders is received at least one of the following: a new bid or an amendment to an existing bid of the bidder. The steps of determining an allocation, causing at least a portion of each bid of the allocation to be displayed to each bidder of a first subset of the bidders that has at least one bid that is not included in the allocation, and receiving from each bidder of a subset of the first subset of bidders a new bid and/or an amendment to an existing bid of the bidder continues until a predetermined condition is satisfied.

As set forth in the background of the present application, heretofore, bidders in a combinatorial exchange received little or no meaningful feedback regarding submitted bids and/or rules that determine how the exchange allocation is determined. This lack of meaningful feedback often resulted in bidders placing bids without assurance that such bid(s) would be competitive. While simple forward or reverse auctions often provide feedback regarding the current winning price, in a combinatorial exchange, especially a live exchange, providing the current winning price may be, and often is, insufficient to enable bidders to submit competitive bids and/or rules that modify the exchange objective. This is because the current winning price is often not the only criteria by which an allocation is determined in a combinatorial exchange.

The steps of claims 1 and 24 overcome this problem by providing feedback regarding the exchange to each bidder that has at least one bid that is not included in the allocation, in order to enhance competition and, potentially, make subsequent bidding more effective.

Clearly, combinatorial exchanges are useful mechanisms for bidders to bid on meaningful lots and groups of items, as evidenced by the following U.S. patents issued to the assignee of the present: U.S. Patent Nos. 7,305,363; 7,010,505; and 6,272,473.

The steps of claims 1 and 24 improve on the basic mechanism of determining an allocation in a combinatorial exchange by providing feedback to bidders that have at least one bid not included in an allocation that enables each said bidder to more effectively compete by facilitating the bidder's formulation of a new bid and/or an amendment to an existing bid that may result in the new bid and/or amended bid being included in a subsequent allocation. More specifically, as set forth in paragraphs [0169] and [0170] of the application as filed:

The purpose of causing at least a portion of each bid included in the allocation to be displayed to each bidder that has at least one bid that is not included in the allocation is to enable the bidder to more effectively compete by facilitating the bidder's formulation of a new bid or an amendment to an existing bid that may result in the new bid or amended bid being included in the next allocation the next time step 304 is executed.

Supplying information regarding only one of the bids included in the allocation to bidders having at least one bid not included in the allocation is of little or no value in a combinatorial exchange since doing so does not provide sufficient information from which the bidders of bids not included in the allocation can formulate new bids or amendments to existing bids that will improve their chance of having a bid included in the next allocation.

Thus, by supplying to each bidder that has at least one bid that is not included in an allocation information regarding at least a portion of each bid of the allocation, each said bidder is able to more effectively place a new bid and/or amend an existing bid that may be included in a subsequent allocation. Clearly, to bidders wishing to acquire or sell items in a combinatorial exchange, providing such information and receiving from each said bidder a new bid and/or an amendment to an existing bid that is more competitive, whereupon the new bid and/or amended bid has a better possibility of being included in a subsequent allocation, is of commercial importance having a practical application that produces a useful, concrete and tangible result of the nature contemplated by the court in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1372 (Fed. Cir. 1998) *cert. denied*, 119 S. Ct. 851 (1999).

For the foregoing reasons, independent claims 1 and 24, and claims 4, 11, 12, 27, 34 and 35 dependent therefrom, are indeed directed to statutory subject matter. Accordingly, reconsideration of the rejection under 35 U.S.C. §101 is requested.

Claims 1, 4, 11, 12, 24, 27, 34 and 35 stand rejected under 35 U.S.C. §102(e) for anticipation by "Ausubel et al." The Form PTO-892 accompanying the Office Action lists two Ausubel et al. patent publications, namely, U.S. 2005/0102215 and U.S. 2007/0055606. Moreover, one of the Forms PTO/SB/08a that accompanied the Office Action includes a reference to Ausubel et al. patent publication U.S. 2002/0046037. Accordingly, in the absence of further identifying information regarding which "Ausubel et al." reference is being utilized in the rejection of the claims, Applicants are left to speculate as to exactly which Ausubel et al. reference the Examiner is referring to.

In the Conclusion beginning on page 7 of the Office Action, the Examiner refers to Ausubel et al. U.S. 2007/0055606. Accordingly, by process of elimination, Applicants believe the Ausubel et al. reference utilized to reject the claims is U.S. 2005/0102215 cited by the Examiner in the form PTO-892 accompanying the Office Action. Accordingly, for the purpose of responding to the Office Action, Applicants will assume the Examiner is referring to U.S. Patent Publication 2005/0102215 to Ausubel et al. (hereinafter "the Ausubel et al. reference"). The Examiner is requested to specifically identify which Ausubel et al. reference is being utilized to reject the claims.

Independent claim 1 recites a method of conducting a live combinatorial exchange. In the method, at least one bid comprised of a plurality of items, an initial quantity

of each item, and a price for all of the items and their quantities is received from each of a plurality of bidders. An allocation is determined for the type of exchange being conducted, wherein said allocation includes a plurality of bids with each bid of said allocation including all of the items of the bid and at least part of the initial quantity of each item. At least a portion of each bid of said allocation is caused to be displayed to each bidder of a first subset of bidders that has at least one bid that is not included in the allocation. From each bidder of a subset of the first subset of bidders is received at least one of the following: a new bid or an amendment to an existing bid of the bidder. The steps of determining an allocation, causing at least a portion of each bid of said allocation to be displayed to each bidder of a first subset of bidders that has at least one bid that is not included in the allocation, and receiving from each bidder of a subset of the first subset of bidders at least one of the following: a new bid or an amendment to an existing bid of the bidder, continues until a predetermined condition is satisfied.

As can be seen, a combinatorial bid includes, not only a quantity for each item of the bid, but also a price that is specified by the bidder, not the auctioneer. For example, a bidder could submit a bid for 2 units of item A for \$2,000.00 or 2 units of item A for \$4,000.00. Rather than establishing and reporting prices, the feedback to losing bidders is at least a portion of the information of each allocated bid. For example, if bid three for 2 units of item A for \$2,500.00 is one of the allocated bids, then the feedback for bid three could be, for example, "bid three is winning 2 units" or "bid three is for \$2,500.00" or "bid three is winning for 2 units of item A for \$2,500.00". The foregoing examples are for illustration purposes only and are not to be construed as limiting the invention.

In contrast, the Ausubel et al. reference describes a clock method for a multi-item auction in which the auctioneer reports prices in each round and the bidders respond with quantities. For example, claim 1 of the Ausubel et al. reference discloses that the auction establishes prices on each item, with a relationship maintained on the relative price across items. The auction then receives bids associated with the established prices. An allocation is determined in terms of the bids received and if the allocation is not consistent with the bids, then the auction adjusts the prices.

Bids are "associated with the established prices" and the prices established by the auctioneer (see Ausubel et al. reference, paragraph [0153]). Bids state the demand quantity given the prices established by the auctioneer. For instance, if the established price

on item A is \$1,000.00, then the valid bid is "2 units of item A". A bidder in the auction of the Ausubel et al. reference cannot submit the bid "buy two units of item A at a price of \$4,000.00" if the established price is \$1,000.00. The auction establishes and reports prices on items.

The Ausubel et al. reference also discloses a variation in which bids are associated with both quantity and price parameter. Paragraphs [0205] - [0231] of the Ausubel et al. reference explain the meaning of "price parameter". This discussion explains that bidders may specify quantity as a function of a *predetermined* range of prices, i.e., the starting price vector and the ending price vector as announced by the auctioneer (see Ausubel et al. reference, paragraphs [0208] - [0225]). Specifically, paragraph [0225] of the Ausubel et al. reference recites, among other things, "if the starting price vector is (4.00, 4.50, 4.75), if the ending price vector is (8.00, 8.50, 8.75), and if a bidder enters a price parameter of 25%, this signifies that the bidder is indicating an implied price vector of (5.00, 5.50, 5.75)".

Thus, in the Ausubel et al. reference, the bidder is picking a price vector among the range of price vectors specified by the auctioneer. The nature of a clock auction is retained: namely, the bidder is stating quantity along a price trajectory established by the auctioneer. The purpose of this is to allow for a small number of rounds but without "undersell" (see Ausubel et al. reference, paragraphs [0199] - [0206]).

Paragraphs [0019] - [0031] of the Ausubel et al. reference provide a further example of what is intended by "price parameter". Specifically, paragraph [0025] of the Ausubel et al. reference recites, among other things:

"... (For example, the price parameter could be an actual price for 3-month Treasury bills, and the prices for 6-month and 12-month Treasury bills could be implied, based on a fixed relation among the prices.) The 'price parameters' could also be neutral parameters or indicators (e.g., in the nature of an index) of a price."

Paragraph [0026] of the Ausubel et al. reference suggests the use of percentages along the range from starting price vector to ending price vector as an example of a "particularly useful form of a neutral parameter". It appears from this that by "neutral parameters or indicators," the Ausubel et al. reference has in mind a reference that is set externally and restricts the kind of price that can be implied by the price parameter. It also appears that by "an actual price for three-month Treasury Bills" the Ausubel et al. reference

has in mind an externally established price. Again, the price driven nature of a clock auction is preserved.

Claim 1 of the present application is not a clock auction. The bids of claim 1 include both quantity and price. The variation of the Ausubel et al. reference that allows for bids to include a "price parameter" still uses this to index to a price trajectory specified either externally or by the auctioneer. In claim 1 of the present application, prices are established by bidders, not by an auctioneer.

In claim 1 of the present application, the feedback to each bidder of a first subset of bidders that has at least one bid that is not included in the allocation is of the form of a portion of each bid of the allocation. This feedback is not in the form of an "establishing means for establishing prices" and "enabling the establishing means to alter the prices established for the plurality of types of items," as is disclosed in the Ausubel et al. reference.

Claim 1 of the present application describes a dynamic exchange in which bidders that have at least one bid that is not included in the allocation refine their bids and/or submit new bids that include both quantity and price in response to information about the bids included in the allocation.

In contrast, the Ausubel et al. reference is directed to a dynamic auction in which the bidders refine their bids that include quantity, and perhaps a price parameter indexed to prices established by the auctioneer or externally. Price feedback is not established or required in claim 1 of the present application, but is essential to the operation of the multi-item clock auction of the Ausubel et al. reference.

As can be seen, the Ausubel et al. reference does not disclose, teach or suggest a method having all the limitations of claim 1. Accordingly, the Ausubel et al. reference cannot anticipate claim 1, or claims 4, 11 and 12 dependent therefrom.

Regarding claims 24, 27, 34 and 35, for the reasons discussed above in connection with claim 1, the Ausubel et al. reference cannot anticipate independent claim 24, or claims 27, 34 and 35 dependent therefrom.

Regarding claims 4 and 27 of the present application, the Ausubel et al. reference does not disclose, teach or suggest a bid having exchange description data (EDD) established by the bidder of said bid, wherein the bidder EDD comprises at least one rule (or constraint) for processing a bid, at least one item of a bid, or a subset of bids that includes all

or less than all of the bids when determining the allocation. The determination of the allocation can include determining the allocation as a function of the bidder EDD.

As best understood, the Ausubel et al. patent does not disclose, teach or suggest individual bids having bidder EDD comprised of at least one rule (or constraint) for processing a bid, at least one item of a bid, or a subset of the bids. Rather, as best understood, the Ausubel et al. reference discloses that rules are externally imposed upon bidders (see Ausubel et al., paragraph [0036]).

Absent disclosing, teaching or suggesting a method or computer readable medium having all the limitations of claims 4 and 27, the Ausubel et al. reference cannot anticipate these claims, or claims 11, 12, 34 and 35 dependent therefrom.

Claims 11 and 34 recite that the amendment to the existing bid in step (b) of claims 1 and 24, respectively, includes at least one of the following: the addition of at least one new rule to bidder EDD associated with the existing bid; the deletion of at least one rule from bidder EDD associated with the existing bid; the amendment of a value associated with at least one rule of bidder EDD associated with the existing bid; the amendment of a value of the quantity of at least one item of the existing bid; or the amendment of the price for all of item(s) and their quantities.

The Ausubel et al. reference does not disclose, teach or suggest the addition or deletion of a new rule to bidder EDD associated with an existing bid, the amendment of a value associated with a rule of a bidder EDD associated with an existing bid, the amendment of a value of the quantity of at least one item of an existing bid, or the amendment of the price for all of the items and their quantities.

Absent disclosing, teaching or suggesting a method or computer readable medium having all the limitations of claims 11 and 34, the Ausubel et al. reference cannot anticipate these claims or claims 12 and 35 dependent therefrom.

Claims 12 and 35 generally recite the use of at least one supervisory constraint that limits adding a rule to a bidder EDD, deleting a rule from a bidder EDD, relaxing a rule of a bidder EDD and/or tightening a rule of a bidder EDD.

As discussed above in connection with claims 4 and 27, the Ausubel et al. reference does not disclose, teach or suggest the use of bidder EDD that is associated with a bid, wherein the bidder EDD comprises a rule (or constraint) for processing a bid, at least one

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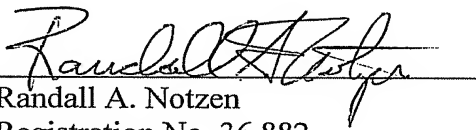
item of a bid, or a subset of bids. Accordingly, the Ausubel et al. reference cannot disclose, teach or suggest all the limitations of claims 12 and 35 of the present application.

Absent disclosing, teaching or suggesting a method or computer readable medium having all the limitations of claims 12 and 35 of the present application, the Ausubel et al. reference cannot anticipate these claims.

CONCLUSION

Based on the foregoing amendments and remarks, reconsideration of the objection and rejections and allowance of claims 1, 4, 11, 12, 24, 27, 34 and 35 are respectfully requested.

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